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June 17, 2026

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Mr. Jonathan Emmer, Director
Reclamation Division, NDPSC
Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dear Mr. Emmer,

This submittal contains a response to your Completeness Review 3 letter to us dated June 10, 2025. In this letter you listed deficiencies that must be addressed before the Revision 13 application to BNCR-1101 can be deemed complete. Below is a listing of the deficiency followed by our response:

General

Review Item Nos. 7 and 8 are more technical in nature and BNI has chosen to wait until the technical review phase to address them.

Table of Contents

1. Appendix 4.6-61 is not included in the Table of Contents. Please review and update the Table of Contents to include any information added to Permit BNCR-1101 that was not part of the previous permit edition. (JAR)
Updated Table of Contents to add Appendices 4.6-60 and 61.

Appendix 1.14-1 – Proof of Liability Insurance

2. Follow-up to Item No. 14: There appears to be a more recent Certificate of Liability Insurance available, dated 2/3/2026 instead of 1/6/2026. Please update Appendix 1.14-1 with this Certificate of Liability Insurance. (BSM)
Replaced updated Certificate of Liability Insurance dated 2/3/26

Appendix 1.5-1 – Notice of Publication

3. The Revision 13 public notice may be revised to delete the third sentence which provides the date of the last permit revision, and the fifth sentence which states that the revision does not add acreage to the permit, since these sentences are unnecessary. The words “Proposed permit” can be deleted from the beginning of the fourth sentence. Township and Range can be abbreviated “T” and “R” respectively in the sixth and seventh sentences. A sentence at the bottom of page 46 stating that an electronic copy of the permit revision may be requested from the PSC should be deleted or revised to state that BNI will provide an electronic copy of the revision to interested

parties. The third sentence on page 47 regarding designating lands unsuitable should be deleted since that opportunity has passed. (GAW)
Revised Public Notice with notes above.

4. The Revision 13 public notice map should be revised to clarify that the “Temporary Bypass” is a (Road Relocation) rather than a (Road Closure). (GAW)
Changed from “Closure” to “Relocation”

Section 3.4 - Surface Water

5. Please depict the entire watershed above the 84-inch culvert (Culvert ID 32) that is to be placed under the haul road in the NW¼ of Section 13 on Plate 3.4-2 (Pre-Mine Watersheds) and Plate 3.4-3 (Post-Mine Watersheds) as required by NDAC 69-05.2-08-07(1)(a). (GAW)
The watershed boundary for Culvert ID 32 has been added to the pre and post mine maps.

Section 4.5 – Transportation Plan

6. Plate 4.5-3 (Section Line Closures, Right of Ways and Detour Corridor) indicates that work within 100’ for the right of way along the west side of 37th Ave. SW would occur in 2025, and Appendix 4.5-1 (Section Line Closure, Right of Ways, and Detour Corridors) includes Oliver County Commission proceedings from August 12, 2025. However, Oliver County rescinded the August 12, 2025, road closure and relocation plan on January 13, 2026, and approved revised plans on April 14, 2026. Please revise Plate 4.5-3 and Appendix 4.5-1 accordingly. Proceedings that have been rescinded should be removed from the permit and correct road closure dates should be provided on Plate 4.5-3. (GAW)
Oliver County Commission took an action of “rescinding” the approved motion of from August 12, 2025 in January of 2026. However under the rules of order of the county commission an approved motion can not be rescinded. BNI Coal however worked with the commission to resolved conflicts/issues that made them consider a revocation action in January. In April they approved a new motion which included the commissions written findings that was absent from the August 12, 2025 motion. BNI believes these dates remain accurate still as the proper action was not taken to ever revoke the approved road closures.
7. Page 28 of Appendix 4.5-2 (Culvert Information Sheets) indicates there will be 18 feet of head at the entrance of Culvert ID 32, but Appendix 4.5-4 (Haul Road Section B) does not support this claim, and the road profile drops east of Culvert 32. Please review and update if necessary. (GAW, BSM)
BNI has chosen to respond to this during the technical review phase.
8. BNI is proposing an 84-inch diameter culvert in the haul road in the NW¼ of Section 13 according to page 28 of Appendix 4.5-2 (Culvert Information Sheets). However, the minimum culvert opening width of a stream crossing shall not be less than the mean bank to bank width as measured from the ordinary high-water mark in the affected stream reach, according to Section B(2) of the USACE Nationwide Permit 14 (ND Required BMP’s), page 26. Please provide the mean bank to bank width of the affected stream and factor peak runoff inflows and outflows in compliance with Section B(3) of the USACE Nationwide Permit 14, Culvert Countersink Depth, requirements. (GAW)
BNI has chosen to respond to this during the technical review phase.

Section 4.6 – Surface Water Management Plan

9. Please depict the entire watershed above the 84-inch culvert (Culvert ID 32) that is to be placed under the haul road in the NW¼ of Section 13 on Plate 4.6-1 (Surface Water Management Plan) as required by NDAC 69-05.2-08-07(1)(a). (GAW)

The watershed boundary for Culvert ID 32 has been added.

10. To aid interpretation, please depict primary and ancillary haul roads and the dragline bridge bypass road on Plate 4.6-1 (Surface Water Management Plan). Please also depict culverts under these roads and show where BNI is planning to install other sediment control measures, such as sumps, silt fence, rock berms, ditch blocks, straw waddles and other BMPs for compliance with NDAC 69-05.2-16-01(1). (GAW, BSM)

Sediment control features have been added to Plate 4.6-1. Additional details of these features are shown in Appendix 4.5-4 and Appendix 4.5-10.

Section 4.12 – Post Mining Land Use

11. It became apparent during review of pending grade approval request 2026_02 that a grassed waterway (GW) in the NW¼ of Section 18 does not conform to the approved Post Mine Land Use Map (Plate 4.12-1). Please review and revise Plate 4.12-1, as this may be an appropriate opportunity to do address the discrepancy. It should also be noted that no permit map currently depicts the post-mine land use and post-mine topography together. The Reclamation Division recommends incorporating the post-mine topography into Plate 4.12-1. Please note that contours are used to confirm the post-mine land uses are supported by the approved topography, and the contour feature lines can be displayed with reduced prominence if map congestion is a concern. This would provide both the Reclamation Division and the mine with a more effective means of identifying future changes, inconsistencies, or potential issues. (BSM)

BNI has updated the grassed waterway linework.

If you have any questions, please contact me.

Sincerely,



Greg Petrick
BNI Coal
Manager Environmental and Technical Services

cc via email only: Jonathan Rudnick (jrudnick@bnicoal.com)
BNI Coal Efilng (BNIefiling@bnicoal.com)